**For Email Transmission**
**Email:** C.Penk@ministers.govt.nz
Minister of Building and Construction
Parliament buildings
Wellington

25 June 2026

Dear Minister,

**RE: SUBMISSIONS ON POSSIBLE AMENDMENTS TO THE UNIT TITLES ACT 2010 ("The Act").**

## Introduction

At last November's Strata Community Association (NZ ) (SCA (NZ)) conference, your address was well received. During the Q&A, I raised concerns about urban intensification in New Zealand and its implications for apartment buildings governed by the Unit Titles Act 2010. The current Act has notable shortcomings that need to be addressed, especially as robust infrastructure is essential.

I asked whether the Government intends to amend the Unit Titles Act 2010. You acknowledged its importance and requested a list of topics for possible legislative improvement.

BCCG Inc has approached the Minister about creating a central register for unit title developments nationwide, with a model similar to New South Wales' Owners Corporations legislation. In a Nine to Noon interview with Katherine Ryan on 7 June (with Associate Professor Rod Thomas), we highlighted several amendment areas needing attention, which I will discuss further in this letter.

## List of Possible Amendments to the Act

The purpose of this letter is to identify various areas which possibly need amendment and provide some details around each of those suggestions. Possible improvements to the Act are the following: -

1. Licensing of Body Corporate Managers.
2. Insurance provisions of the Act.
3. Repairs and maintenance provisions of the Act.
4. Mandatory Emergency Management Planning.

5. Proxy farming.

6. Dispute resolution triaging.

7. Mandatory education for committee members.

8. Revision and rationalisation of the disclosure regime, in particular the pre-contract disclosure statement under regulation 33.

9. Penalties for committee members who breach the Code of Conduct.

10. Introducing penalties on owners for breaches of Operational Rules.

11. Adoption of Model Rules similar to those in the Queensland legislation.

12. Mandatory Long-Term Maintenance Funds.

13. Clarification of the meaning of " bank account " in the Act and Regulations.

Some details around each of these are below.

## Details of each suggested amendment

### 1. Licensing of Body Corporate Managers

The Unit Titles (Strengthening Body Corporate Governance and Other Matters ) Amendment Act 2022 included the new provisions around the obligation for bodies corporate to contract or employ a body corporate manager under s.157B. Nikki Kaye's working party considered, as part of the Working group paper, the inclusion of licensing body corporate managers, but this was never brought forward into the amendment act.

As a result of various defalcations by body corporate managers recently, it is suggested that there is a need to bring body corporate managers into a licensing regime similar to that of real estate agents under the Real Estate Agents Act 2008. Where the building is carrying out remediation, body corporate managers frequently hold large sums of money for their clients, both for their operating account and contingency funds. Sometimes the amounts can run into millions of dollars. Large bodies corporate may maintain a large long-term maintenance fund. Body corporate managers hold these funds, but unaudited, and the funds are only protected by the vigilance of the body corporate committees. It is our view that this is no longer adequate.

That point was brought into stark reality when a member of the BCCG Inc became aware that its manager, Haven Living Management Ltd (in liquidation), had fraudulently taken a large sum of money from its long-term maintenance fund.  This is yet one example of the problem that arises where body corporate managers are not licensed or regulated in any way.

## 2. Insurance provisions under sections 136 to 138

Our understanding is that an insurance working group in Wellington has made submissions to Minister Christopher Bishop on this issue.  We understand that various officers at the Ministry of Housing and Urban Development (MHUD) are already investigating the submissions made on this matter, which, in the main, is supported by the BCCG.

## 3. Repairs and maintenance provisions under sections 138 and 126

There appears to be a conflict between these two sections.  The conflict has been litigated several times, but the high-water case in this area is Body Corporate S73368 v. Ottway [2018] NZCA 612. The Court of Appeal in Ottway made the point that: -

> *"[35] – It is apparent that the relationship between s.138(4) and s.126 of the UTA 2010 created some potential difficulty here.  This difficulty was the focus of a large part of the argument before us on this appeal.  It is a significant issue in this and other cases and has also been recognised by commentators in this area".*

In reference to commentators, the footnote in the case noted the example of the article by Thomas Gibbons called "Maintenance", which was a paper presented to the New Zealand Law Society Unit Titles Intensive Conference in April 2013.

Given that this matter has been litigated on several occasions before the Court of Appeal, it is considered that there is a need for a review of these sections and a rationalisation of the interplay between s.138(4) and s.126 of the UTA 2010.

## 4. Mandatory Emergency Management Planning

The current legislation does not specifically provide for the Body Corporate or its committee to address emergency management planning in a structured or mandatory manner. However, given the increasing frequency and severity of emergencies affecting communities throughout New Zealand, there is a growing need for unit title communities to actively engage in emergency preparedness and resilience planning.

Recent events across New Zealand have highlighted the vulnerability of apartment and multi-unit developments during emergencies. Events such as the Canterbury Earthquakes (2010–2011), the Kaikōura Earthquake (2016), the Auckland Anniversary Weekend Floods (2023), Cyclone Hale

(2023), Cyclone Gabrielle (2023), and significant flooding and severe weather events in Wellington and other regions caused widespread disruption to buildings, infrastructure, utilities, transport networks, and essential services. In many apartment and unit title developments, residents experienced flooding of common property areas and basements, power outages, lift failures, restricted building access, loss of water services, communication disruptions, and difficulties evacuating or supporting vulnerable occupants. In some cases, residents were isolated for extended periods and required coordinated support from neighbours, committees, building managers, and emergency services.

The Emergency Management Bill (No 2) places greater emphasis on community resilience and preparedness. Unit title communities are uniquely positioned to contribute significantly to this objective due to the proximity and shared reliance of owners and occupiers within multi-unit developments. This could be achieved by specifically recognising Body Corporates as named communities under the legislation and by including emergency preparedness and resilience within the purposes and functions of the Unit Titles Act 2010.

As demonstrated during the COVID-19 pandemic and more recent severe weather events, residents within unit title developments often rely on support from other members of the body corporate community during emergencies. Vulnerable residents, including the elderly, infirm, disabled, or medically dependent occupants, may require assistance during periods of lockdown, flooding, infrastructure failure, or utility outages.

Where apartment developments experience flooding, power outages, lift failures, restricted access, telecommunications outages, or water supply disruptions, residents can become isolated and unable to access essential services. This has been particularly evident in regions affected by the 2023 storm and cyclone events, including Auckland, Hawke's Bay, Tairāwhiti/Gisborne, Coromandel, Northland, and Wellington.

Support and coordination are significantly more effective where there is a pre-established Emergency Management Plan tailored specifically to the unit title development. These plans can identify vulnerable occupants, establish communication protocols, outline evacuation procedures, address generator and utility contingencies, and coordinate welfare support during emergencies. This is particularly important for medium and high-density apartment developments where residents are heavily reliant on shared infrastructure and services.

This leads to the broader question of whether a Body Corporate should be required to establish and maintain an Emergency Management Plan addressing a variety of emergencies. At present, there is no direct statutory responsibility placed on the Body Corporate, as a community of owners and occupiers, to establish or maintain such a plan.

Given the increasing frequency of natural disasters, severe weather events, earthquakes, infrastructure failures, and public health emergencies in New Zealand, consideration should be given to introducing legislative requirements for emergency management planning within unit title developments. Such planning would promote community resilience, improve occupant safety, assist emergency services, and support coordinated responses during emergency events.

This issue links with the important issue of a nationwide database of unit title developments. The difficulty that Emergency Services have had to gaining access to apartment buildings was highlighted during the COVID-19 pandemic. The lack of a database with contact details for each building was a major impediment to assisting those affected by the pandemic. The same is the case for FENZ access during other sorts of emergencies. The need for such a database has already been signalled by the BCCG in its letter to the Minister dated 1 October 2025, which, as far as we are aware, has yet to be actioned by MBIE.

It is our submission that this should be a mandatory requirement on Bodies Corporate by including it in both the Emergency Management Bill (No 2) and the Unit Titles Act (Amendment).

## 5. Proxy farming

The issue of proxy farming was considered during the process of the Amendment Act 2022. Amendments to the Act regarding voting at a body corporate's general meetings were not addressed in the manner that various parties considered adequate. Proxy farming has continued to occur, with unscrupulous owners taking advantage of the lack of prohibition on proxy farming. It is recommended that this matter be revisited under any amendment act.

## 6. Dispute resolution triaging

It was apparent during a presentation at the November SCA (NZ) conference that the Tenancy Tribunal service is overwhelmed with mediation around minor unit title disputes. It seems appropriate that some form of triaging should be included in the regulations to enable minor disputes to be dealt with in the first instance rather than being forced into mediation.

The BCCG acknowledges the existence of a dispute resolution ombudsman scheme established in South Africa, known as the Community Scheme Ombud Service. This service was created under the Community Scheme Ombud Service Act 2011 (Act No. 9 of 2011) with the purpose of regulating the conduct of parties within community schemes. We recommend this model be considered for further examination as a potential means to address challenges currently faced in the New Zealand system.

## 7. Mandatory education of committee members

The election of committee members from within the Body Corporate is an area of concern. Many bodies corporate struggle to elect a full committee. Body Corporate committee members are often lay persons who have little or no understanding of governance and management. Notwithstanding the recent inclusion in the amendment act of a code of conduct for committee members, there is no formal education in place for committee members.

The BCCG, in conjunction with SCA (NZ), provides voluntary education for committee members. Given that there are in excess of 15,800 bodies corporate in New Zealand run by committees which lack experience in or knowledge of governance, management and the functions of the Unit Titles Act and Regulations, this is an area which needs to be addressed. We note that New South Wales has recently imposed, under its legislation, mandatory education for committee members.

If such a scheme were to be put in place in New Zealand, education could be run by either or both of the SCA (NZ) and the BCCG.

## 8. Revision and rationalisation of the disclosure regime, in particular Regulation 33

The current Pre-Contract Disclosure Statement (PCDS) is governed by Regulation 33 of the Unit Title Regulations 2011 (" The Regulations"). Evidence has been presented to the BCCG that many purchasers fail to read the disclosure statement presented before purchasing a unit in a unit title development. This is in part because the disclosure statements can be voluminous and are difficult for laypeople to understand.

Our submission is that the information required under Regulation 33 is too extensive and not well targeted to meet the needs of proposed purchasers. There needs to be a reconsideration of what exactly purchasers require to make an initial judgment as to whether to buy the apartment. The existing requirements under Regulation 33 have gone too far. It is not fit for purpose, which is to enable the prospective buyer to decide if this is a good unit and body corporate to buy into.

Evidence from body corporate managers is that, in some instances, the PCDS runs into many hundreds of pages. This is particularly so where there has been a remediation, and there are extensive remediation reports and numerous EGMs. We submit that a complete revision of the PCDS is essential.

## 9. Penalties for committee members who breach the Code of Conduct.

The Code of Conduct for committee members was imposed in regulation 28A and Schedule 1A. The regulations do not contain any penal provisions if a committee member breaches that code. For example, a committee member could breach the conflict of interest provisions of the regulations to the detriment of the Body Corporate, yet fail to be penalised or disciplined in any particular way.

It is submitted that there needs to be a revision to Regulation 38A to include a disciplinary provision.

## 10. Imposing penalties on owners for breaches of rules

Many disputes arise within bodies corporate around owners' failure to comply with the rules. There are no provisions in the Act or Regulations that impose penalties on owners who breach rules persistently. Many of these disputes are then referred to the Tenancy Tribunal Services for dispute resolution.

If there were penalty provisions on unit owners for breaches of rules, then many of these disputes could be resolved within the Body Corporate, rather than being referred to and clogging up the Tenancy Tribunal Services.

## 11. Model rules

This issue was advanced in the earliest paper on amendments to the 1972 Act. In the paper entitled " A Case for revision of the 1972 Act," August 2003, by Jones, Fuller and Waghorn, examples were given of the Queensland legislation where model rules were included in the regulations for different types of unit title developments. The Regulations contain a very basic set of rules, and they are often supplemented by the Body Corporate passing additional rules or adopting the Law Association of NZ ( TLANZ – formerly the Auckland District Law Society) rules.

As New Zealand's unit title development numbers have increased significantly and become more varied, it is submitted that now is the time to revisit this issue.

The TLANZ model rules are for residential apartments, mixed-use developments, and commercial/industrial developments. They are widely used in the unit title sector. Frequently, they are enhanced with specific rules for the particular development. The difficulty with drafting rules is that they must be intra vires within the provisions of s.106 of the Act. Frequently, Body Corporate committees draft rules to deal with difficulties within their development, which may be challenged as being ultra vires. These difficulties may include such things as pets, short-term accommodation, noise, and smoking, amongst others.

It is submitted that if more extensive model rules were drafted and formed part of the regulations, this would greatly reduce the number of challenges to rules in terms of the vires of the rule.  This will, in turn, reduce the number of cases before the Tenancy Tribunal, where there are many challenges to the vires of rules.  Model rules will assist both Body Corporate committees and owners, and reduce the disputes between owners around the vires of the rules.

## 12. Mandatory Long-Term Maintenance Funds (LTMF)

The provisions of s.117(1) make it optional for a Body Corporate to establish an LTMF.  The Body Corporate may, by special resolution, decide not to establish such a fund.  S.117(1)(B) was inserted under the 2022 Amendment Act, whereby if the Body Corporate does not establish a fund, it must review that decision annually.

These provisions run contrary to good repairs and maintenance practice for Body Corporate developments.  The lack of funding to resource the implementation of the mandatory Long-Term Maintenance Plan (LTMP) has significant problems for unit title developments and unit title owners.  The plan will fail unless there are financial resources to implement it.  The view within the industry is that the general lack of funds puts significant pressure on unit title owners to pay for various items of repair and maintenance set out in the plan by special levy, often without notice.  The alternative is for there to be a mandatory requirement for a fund to be maintained in accordance with the provisions set out in the LTMP.

Anecdotally, the BCCG has been told on many occasions that owners are faced with a significant special levy required for maintenance of a particular item under the LTMP. Accordingly, the standard of maintenance and repair of many apartment buildings throughout New Zealand is poor. We propose that section 117 should be revised to require that LTMFs be mandatory. Additionally, the Act should include a requirement for all new developments where the developer must establish an LTMF before any units in the development are settled. The regulations could specify what percentage of the developer's funds should be allocated to this "seed" LTMF, which would then be transferred as an asset to the Body Corporate committee at the time the Turnover Disclosure is completed under the Act.

## 13. Clarification of the meaning of "bank account" in the Act and Regulations

The Act in s115(3) refers to opening a current account at a bank. Regulation 31 refers to bank accounts. There is uncertainty amongst members of the Body Corporate Management entities as to what is meant by a " bank account" for the purposes of the UTA. Some body corporate managers run their clients' Body Corporate finances through what are called "trust accounts". These are accounts in the manager's name and controlled by the manager. There are sub-accounts for each Body Corporate client. Under such arrangements, the Body Corporate does not have a bank account in its own name, and it has no control over its funds other than through the manager. This would appear to contravene the Act and Regulations. These need to be amended to clarify the precise meaning of bank account.

## Concluding Comments

The BCCG has grave concerns that the Act and the Regulations are not fit for purpose in many respects. As more and more apartment buildings are built throughout New Zealand, the problems arising from the inadequacy of the Act and Regulations cause significant problems and hardship to unit title owners.

Moreover, the problems are seen by the buying public as a disincentive to purchasing apartments and instead purchase townhouses, where it is perceived that the same problems do not occur. Townhouses have no statutory overlay and ultimately have their own particular problems. Townhouses are traditionally limited to three storeys. Buildings of more than that should be an apartment under the Unit Titles Act 2010. Thus, the rationale for the amendment to the Act and Regulations.

Many of the above issues have been discussed in the unit title sector over many years. Some of these suggested submissions are urgent, and it is hoped that they will be addressed by the Minister and his officials at the earliest opportunity.

The BCCG also notes the support of SCA (NZ) for ongoing legislative review and industry submissions aimed at strengthening New Zealand's unit title regime . As the only professional body representing the strata and body corporate management sector in New Zealand, SCA (NZ) has consistently advocated for practical reform that improves governance standards, consumer protection, education, professional accountability, and the long-term sustainability of unit title communities alongside the BCCG representing the owners of those unit title developments.. Submissions such as this reflect many of the challenges and opportunities regularly identified across the sector and demonstrate the importance of collaborative engagement between industry bodies, government, and stakeholders in ensuring the Unit Titles Act remains fit for purpose into the future.

The BCCG is open to discussion with the Minister and his officials over these submissions.

Yours faithfully

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